

DWAYNE KELLY SCOTT
Claimant

TOTAL INTERIORS

Respondent

CNA INSURANCE COMPANIES

Insurance Carrier

ORDER

APPEARANCES

ISSUES

² K.S.A. 1999 Supp. 44-551.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Judge Foerschler's May 19, 2000 order provides: "Glenn Amundson, M.D., is appointed as a neutral physician under K.S.A. 44-516 to examine claimant and report his findings as to whether his current back condition and complaints are related to his employment at Total Interiors, and the need for his return for additional needed treatment."

As stated, respondent argues the ALJ's order is improper because the claim is not compensable. But an order for an independent medical examination (IME) under K.S.A. 44-516 is not a finding of compensability. The ordered examination is not medical treatment. Thus, it is neither a preliminary hearing award of benefits entered under the preliminary hearing statute nor is it a final award. The Board has previously held that an order for an independent medical evaluation is an interlocutory order.³

Generally, a decision or order is final only when it resolves all issues between the parties and reserves no further question for future action. However, the Board has recognized an exception to this general rule.⁴ In Skahan v. Powell, 8 Kan. App. 2d 204, 653 P.2d 1192 (1982), the Court of Appeals states three criteria whereby an order may be final even if it does not resolve all issues between the parties. The order may be final if it (1) conclusively determines the disputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment. In our view, however, an order referring a claimant for an IME does not satisfy these three criteria. The order will not conclusively determine the disputed questions of causation and the nature and extent of claimant's disability. Furthermore, it does not even determine the question concerning whether the order itself is proper because the independent medical examiner's report can be objected to at the time of the submission of the case and that issue can be determined by the ALJ at the time of award and reviewed on an appeal from that award, if necessary. The purpose of the ordered examination goes to the merits of the action in that the issue is the causation of claimant's injury. And, as stated, the questions concerning the propriety of the examination and the admissibility of the results of that examination are reviewable both at the time of submission to the ALJ and on appeal. The order, therefore, is interlocutory and not final and the Board is without jurisdiction to review the Order for Neutral Physician.

WHEREFORE, the Appeals Board dismisses this appeal leaving the Order for Neutral Physician in full force and effect.

IT IS SO ORDERED.

³ See e.g., Kitchen v. Luce Press Clippings, Inc., WCAB Docket No. 228,213 (April 1999).

⁴ Rhodeman v. Moore Management, WCAB Docket No. 234,890 (Oct. 1999).

Dated this ____ day of July 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dennis L. Horner, Kansas City, KS
Timothy G. Lutz, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director